

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 6844 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DIGANT M PARIKH MANAGING DIRECTOR & 2 - Applicant(s)

Versus**SHREEJI INVESTMENT & 1 - Respondent(s)**

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Appearance :

MR AJ YAGNIK for Applicant(s) : 1 - 3.

MR AR MAJMUDAR for Respondent(s) : 1,

MR PD BHATE ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/09/2006**ORAL JUDGMENT**

1. The petitioner has approached this Court
under Section 482 of the Code Criminal Procedure,

1973 with the prayer to quash Criminal Complaint No.3551 of 2000 filed by respondent No.1 and pending in the Court of the learned Judicial Magistrate, First Class, Vadodara, who had taken cognizance and issued summons to answer the charge of the offences punishable under sections 406 and 114 of the Indian Penal Code, 1860. Although the complaint of the respondent also alleged the offence punishable under section 420 of the Indian Penal Code, the trial Court has not issued process in that regard.

2. It is the case of the petitioners that the respondent-original complainant was admittedly dealing in purchase and sale of shares since about four years with the petitioners who are office bearers of a finance company. According to the petitioners, the complainant had entered into a written agreement with the company of the petitioners and authorized them to transact on the complainant's behalf and accepted all the responsibilities and liabilities for the acts and omissions of the petitioners subject to the rules and regulations of National Stock Exchange of India Ltd. According to the agreement and in light of the relevant rules, any dispute in respect of the transactions among the parties had to be referred to an arbitrator appointed by the National Stock Exchange. The complainant had raised the very same disputes about which the

complaint was filed and they were referred for arbitration to the National Stock Exchange at Mumbai which appointed an arbitrator. At the end of arbitration proceedings, award dated 14.8.2000 was made and some minor clarifications therein were made on 29.8.2000; and the award had gone against the complainant who was directed to pay to the petitioners an amount to the tune of Rs.1,16,195.52 along with interest @ 18%. The complainant was also directed to deliver shares of different companies, but the complainant did not comply with any part of the award and was facing execution proceedings. It was under such circumstances that the complaint in question came to be filed, raising and repeating the same disputes which were raised in the arbitration proceedings; and suppressing the fact that there already was an arbitration and an award in respect of the same disputes.

2.1 It was in the background of above facts that the learned counsel for the petitioners submitted that the complaint in question and the criminal prosecution pursuant thereto was clearly an abuse of the process of court calculated to thwart the execution proceedings. It was also submitted that the disputes between the parties were obviously of purely civil nature and essential ingredients of the offences under sections 406 and 114 of the Indian Penal Code

were not made out in the complaint. It was pointed out that immediately after making of the award, the criminal complaint in question was filed even as the award had become final and was not challenged on any ground or count.

3. Respondent No.1-original complainant has not filed any affidavit-in-reply and even during the oral arguments of the learned counsel, the essential factual averments of the petitioner were not denied. Therefore, the averments made in the petition have to be taken at their face value. A bare reading of the complaint reveals that not only that the parties had commercial relation and history of dealing with each other in shares and stocks, but disputes of civil nature are voiced in the complaint. It is repeatedly alleged, in relation to one after the other alleged transactions, that the petitioners had created or concocted certain documents, made incorrect entries in the ledgers and failed to deliver certain shares. As against the allegation that the petitioners were not supplied with annexures to the complaint, the respondent has not cared to produce even before this Court the documents on which he has relied. Therefore, *prima facie*, there are allegations of complicated commercial transactions without support of any documentary evidence and the respondent has not cared to show before this Court how any

particular offence was disclosed in any particular transaction and how was that even *prime facie* borne out by any documents which are supposed to have been filed along with the complaint. The complaint is concluded with the vague allegation that the applicants had initially inspired trust and then committed breach of trust.

4. Mr.G.K.Mehta, learned counsel for the respondent, argued that the arbitration proceedings initiated by the respondent itself were no bar to the prosecution and relied upon the judgment of the Supreme Court in ***Trisuns Chemical Industry v. Rajesh Agarwal [AIR 1999 SC 3499]***. He, however, completely and comprehensively failed to show how, even *prima facie*, the ingredients of the offence of criminal breach of trust as defined in section 405 of the Indian Penal Code were made out in the complaint. Therefore, in short, taking the allegations made in the complaint at their face value, the offences as alleged were not made out. On the other hand, the allegations of abuse of the process of Court and of the obvious intention of defeating or delaying execution of the decree passed against the complainant in the form of arbitration award were not even formally dispelled.

5. In the above facts and circumstances, the complaint of respondent No.1 and the criminal case pursuant thereto are found and held to be an abuse of the process of court and are required to be quashed in the interest of justice. Accordingly, the petition is allowed and the complaint registered as Criminal Case No.3551 of 2000 at the instance of respondent No.1 and pending in the Court of the learned Judicial Magistrate, First Class, Vadodara is quashed. Rule is made absolute with no order as to costs. Direct service is permitted.

Sd/-

(**D.H.Waghela, J.**)

(KMG Thilake)